

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRITT E. BYRD)	
Claimant)	
VS.)	
)	Docket No. 193,892
ESSEX GROUP INC.)	
Respondent)	
AND)	
)	
NATIONAL UNION FIRE INSURANCE CO NY)	
Insurance Carrier)	

ORDER

Respondent appeals from an Award entered by Special Administrative Law Judge William F. Morrissey on November 18, 1996. The Appeals Board heard oral argument April 22, 1997.

APPEARANCES

Claimant appeared through his attorney, Frederick J. Patton, of Topeka, Kansas. Respondent and its insurance carrier appeared through their attorney, Matthew S. Crowley, of Topeka, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record identified in the Award by the Special Administrative Law Judge. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

On appeal, respondent requests that the Appeals Board review the findings and conclusions by the Special Administrative Law Judge on the following issues:

- (1) Whether claimant made timely written claim as required by K.S.A. 44-520a.
- (2) The nature and extent of claimant's disability.
- (3) Whether claimant is entitled to any benefits other than medical benefits because of the provisions of K.S.A. 44-501(c).
- (4) Whether claimant is entitled to future medical expense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and considering the arguments, the Appeals Board finds that claimant did make timely written claim for the accident of October 21, 1992.

(1) Claimant first injured his right elbow on October 21, 1992, while he was cutting a sample of material. Claimant notified his supervisor and was sent to the emergency room. From there, claimant was referred to Dick Geis, M.D., and Doug Frye, M.D. The treatment by Drs. Geis and Frye was authorized medical care. Claimant later went on his own to a chiropractor, David T. Beckley, D.C. Claimant advised Dr. Beckley that the injury was a workers compensation claim and asked the doctor to send the bill to his employer. Dr. Beckley's office sent a form statement to respondent. Although claimant testified the form was left from a prior automobile accident, the form indicates it is a health insurance claim form. The form states that the condition is related to claimant's employment. Respondent had forwarded previous bills for medical treatment to the agency handling their claim, Gallagher Bassett Services. This form was also forwarded to Gallagher Bassett Services.

In response, Dr. Beckley received a letter from Gallagher Bassett Services which stated in pertinent part:

"Please be advised that Gallagher Bassett Services is the worker's compensation claims administrators for the above referenced client. I am in receipt of a claim for Mr. Byrd wherein he has an alleges [sic] a right elbow injury. The claimant was advised by his employer that treatment for this injury would need to be sought through their authorized physicians in order for payments to be covered. Since your office is not authorized by the client, we have paid the maximum benefit for unauthorized treatment available to the claimant in the amount of \$350.00."

Claimant testified he intended the statements from Dr. Beckley to be a claim for compensation. Under the specific circumstances of this case, the Appeals Board agrees that the form did act as a claim for compensation. Medical expenses are, of course, a workers compensation benefit. The forms submitted notified the employer that the expenses were for a work-related injury. Respondent treated it as a workers compensation claim by forwarding it to the agency handling their workers compensation benefits. The agency acknowledged the claim as a claim for workers compensation benefits. The Appeals Board, therefore, finds that the form submitted by the physician, at claimant's request, did act as a claim for compensation and satisfies the statutory requirements. See Wietharn v. Safeway Stores, Inc., 16 Kan. App. 2d 188, 194, 820 P.2d 719, *rev. denied* 250 Kan. 808 (1991); Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973).

(2)(3) The Appeals Board finds that claimant is not entitled to benefits other than medical care because he was not disabled for one week from earning a full wage. K.S.A. 44-501(c).

The deposition testimony given by claimant establishes he did not miss work for either the injury of October 21, 1992, or the injury of September 28, 1994. In Boucher v. Peerless Products, Inc., 21 Kan. App. 2d 977, 911 P.2d 198, *rev. denied* 260 Kan. ____ (1996), the Court of Appeals construed K.S.A. 44-501(c) to hold a claimant is limited to medical benefits if the injury does not disable him or her for a period of at least one week from earning full wages. After the Boucher decision, the Legislature enacted Senate Bill No. 649 as an amendment to K.S.A. 44-501(c). The amendment allows a claimant to recover permanent disability benefits even if not disabled for a week, and the Senate Bill specifically provides that it is to be applied retroactively to all cases not fully adjudicated at the time of its enactment, which would be the present case.

In Osborn v. Electric Corporation of Kansas City, ____ Kan. App. 2d ____, 936 P.2d 297 (1997), the Court of Appeals ruled that retroactive application of Senate Bill No. 649 is unconstitutional. On July 10, 1997, the Kansas Supreme Court denied a petition for review of the Osborn decision. The amendment to K.S.A. 44-501(c), therefore, does not apply to this claim. Claimant's award is limited to medical benefits only. The record reflects respondent has paid \$1,329.82 in medical expenses, and claimant asserts no claim for any unpaid medical expenses. This Award will, therefore, be for medical expenses paid.

(4) The Appeals Board finds claimant is entitled future medical expenses upon application and approval by the Director of the Division of Workers Compensation.

Respondent argues that there is no medical evidence claimant will need future medical treatment for the injuries addressed in this claim. The Appeals Board agrees that there is no evidence of need and, accordingly, would find it inappropriate to order such treatment. However, the Appeals Board considers it appropriate to affirm the Award of the Administrative Law Judge providing that future medical be granted only upon proper application and approval by the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey, dated November 18, 1996, should be, and is hereby, modified.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Britt E. Byrd, and against the respondent, Essex Group Inc., and its insurance carrier, National Union Fire Insurance Company of New York, the medical expenses in the amount of \$1,329.82 previously paid.

Claimant's request for permanent partial disability benefits is denied.

The award is further made for future medical expenses only upon proper application to and approval by the Director of the Division of Workers Compensation.

The Appeals Board approves and adopts all other orders made in the Award of the Special Administrative Law Judge relating to attorney fees and expenses of administration of the Act.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frederick J. Patton, Topeka, KS.
Matthew S. Crowley, Topeka, KS.
William F. Morrissey, Special Administrative Law Judge
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director